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IN THE

Supreme Court of the United States

OCTOBER TERM, 1910.

No. 398.

Office Supreme Court, U. S.
FILED.
DEC 22 1910
JAMES H. McKENNEY

STANDARD OIL COMPANY ET AL., Appellants,

vs.

THE UNITED STATES.

Appeal from the Circuit Court of the United States for the Eastern District of Missouri.

Revised Brief on the Law on Part of Appellants On Re-Argument.

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Purpose of the Brief.

It is to show—

FIRST. The case is one involving the rights of individual citizens of the United States, who, the petition charges, conspired to and did restrict and monopolize interstate trade in oil in contravention of the Sherman Act.

The court below so held, and in that erred, because:

(A) The Government failed to so prove.

(B) The things which the individuals did do, were lawful and not forbidden by the Sherman Act.

SECOND. The court below held that because (*and solely because*) the seven individual appellants, who as joint owners of a group of non-competitive properties, had been engaged for forty years in private business in the manufacture and sale of oil, instead of continuing to so hold through nine trustees under the control of the seven individual appellants, changed in 1899 the *method* of holding their properties by conveying them to the Standard Oil Company of New Jersey, but still under the management of the seven—*that such change* in the method of holding titles was a violation of the Sherman Act, and that it had been so ruled by this court in the Northern Securities case.

This, we submit, is plainly and markedly erroneous.

THIRD. As proven by the evidence, the Standard Oil business as it existed in 1906, and still exists, was the natural development and outgrowth of the business begun in 1862, and steadily pursued by the Rockefellers and others. By untiring energy, with infinite skill, with abundant capital and the steady reinvestment of early profits, these men and their associates created out of an entirely new, unique and unprecedented production of crude oil, a new illuminant, universally used and the cheapest that the world has known. By creative skill they secured from refuse oil valuable by-products. They invented the huge reservoirs for storing oil —the combined pipe line system which gathers up and carries the natural products—the tank cars which carry the refined product. They created the export trade in oil, transporting it in ships of their own construction, selling it in Asia, India, China, Japan, Africa and all Europe. They devised the trading stations—the tank delivery wagons—and used every means to cheapen the product and improve the quality. From 1862 to 1906 (44 years) the work went on. They took the risk of failure in production, of destruction by fire and tempest, besides all the ordinary risks of trade. They met all emergencies with competent skill and sufficient funds. The unexpected, enormous increase in production greatly increased their business and added to its importance and profit. Their methods of holding their joint properties and the management of them were dictated by economic reasons. They used the best and cheapest methods in the holding of titles, just as they did in the transportation, production, refining and sale of oil, and they sought to produce and always did produce the best and cheapest product.

They competed with the same energy and skill which they had used in building up their capital and business.

They succeeded as if one had developed unexpectedly a gold or diamond mine, and abundant revenue legitimately became theirs.

Their business thus created was a lawful one, and the owners thereof were and are lawfully entitled to continue the same; and if in 1906, when the petition was filed, they were not restricting interstate trade or, by unlawful means, seeking a monopoly (which they were not), the court should not have interfered with them.

And yet, without finding any such illegal acts or any illegal act, and after forty-four years of this toil and strife and enterprise and skill and devotion to one business and such energies spent, by a remarkable group of men, and when the harvest was being gathered for their nigh half-century's work, then in 1910 the court below struck them down, disintegrated their organization.

And why?

Not because in 1906 they were restricting interstate trade, or by means then unlawful were maintaining a monopoly—

Not because they had by force or fraud or illegal acts eliminated their competitors and gained in an unlawful way the control of the interstate trade in oil—

But *solely* and *only* because in 1899 they conveyed all *their* property to the Standard Oil Company of New Jersey, which (the court below held) was a violation of the Sherman Act.

Before they so conveyed, they were a lawful group, lawfully doing business.

After the conveyance, and solely by reason thereof, they were a group of lawless conspirators.

With great respect for the Court which so held, we submit that such a rule is not justified by any possible construction of the Sherman Act nor sanctioned by any ruling of this court.

The Court erred in making the decree which it did.

FOURTH. In this equitable proceeding the Sherman Act (section 4) only gave the court after petition filed

"setting forth the case"

"jurisdiction to prevent and restrain violations of this act;"

"to prevent and restrain such violations;"

"such violation shall be enjoined or otherwise prohibited".

The power is plainly only preventive and negative; it is to prevent the continuing, then existing violations of the Sherman Act—or such foreseen and expected and at present anticipated violations.

Yet the Court below entered a decree which (in results) orders a dissolution of the Standard Oil Company of New Jersey; divides its now united plant into many units which were not competitive, and compels competition; creates new units where none existed before; prevents the use of units with each other; restricts appellants to the joint ownership of only one unit; segregates into units properties actually built with appellants' money for necessary joint use in the economical conduct of appellants' business; regulates the ownership of real estate in different States; compels the appellants to continue their business (if at all) with these separated units at the risk of an attachment for contempt under a vaguely worded decree; and restricts the appellants from any participation in interstate commerce until such dissolution of the Standard Oil Company of New Jersey is effected.

FIFTH. The Government, not having appealed, cannot assign error to the decree of the Court below, or object to its findings of fact, or ask to have additional facts found which the Court below did not find. If the facts found are not sufficient to support the decree, it must be reversed.

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Argument.

I.

THE GOVERNMENT HAS FAILED TO MAINTAIN THE AFFIRMATIVE OF THE ISSUE MADE BY THE PLEADINGS, AND TO PROVE THAT THE SEVEN INDIVIDUAL APPELLANTS, AS A MATTER OF FACT, WERE, WHEN THE PETITION WAS FILED, IN CONTROL AND MANAGEMENT OF, AND DICTATING TO, THE OTHER DEFENDANTS IN THE BILL IN AN EFFORT TO RESTRAIN INTERSTATE TRADE OR MONOPOLIZE ANY PORTION OF THE SAME IN CRUDE PETROLEUM AND ITS PRODUCTS, CONTRARY TO THE PROVISIONS OF THE SHERMAN ACT, AND THE COURT BELOW ERRED IN HOLDING TO THE CONTRARY.

It is a familiar rule that when the Sovereign, either the State or the United States, comes into a court as a suitor, she stands exactly as the citizen with whom she disputes, and can claim no other or higher or greater privileges than that citizen. She is governed by the same rules of law and equity that govern the citizen. She is subject to the rules of pleading—not in a proceeding like this under the Sherman Act, to common law precision—but still she is subject to those rules of pleading which imperatively require that the Petition and the Answer and the other pleadings must frame *an issue*, and *the issue*, when once framed, is the sole point to which the testimony in the case should be directed; and the solution of the issue is the termination of the case.

In *Brent vs. The Bank,* 10 Peters, 614, the Supreme Court said:

> "Thus compelled to come into equity for a remedy to enforce a legal right, the United States *must come as other suitors,* seeking in the administration of the law of equity relief. * * * This court, in *Mitchell vs. United States,* 9 Pet., 743, have recognized the principle in the common law, that though the law gives the King a better or more convenient remedy, he has *no better right in court than the subject.*"

In *The Siren,* 7 Wallace, 154, the court said that the United States as a suitor stands,

> "* * * in such proceedings, with reference to the rights of defendants or claimants, *precisely as private suitors,* except that they are exempt from costs and from affirmative relief against them, beyond the demand or property in controversy."

In *United States vs. Stinson,* 197 U. S., 200, 205, Mr. Justice Brewer said:

> "The Government is subjected to the same rules respecting the burden of proof, the quantity and character of evidence, the presumptions of law and fact, that attend the prosecution of a like action by an individual."

No matter what latitude has been given to the form of these petitions under the Sherman Act, it must still be true that the Petition *must* state, in a definite and plain way, its cause of action; that the Answer must respond to these allegations; and that the replication must seal the issue.

In *Swift & Company vs. United States,* 196 U. S. 395, Mr. Justice Holmes said, in discussing the sufficiency of a Petition, that, while it need not have the precision of an indictment one hundred years ago,

> "* * * it is to be taken to mean what it fairly conveys to a dispassionate reader by a fairly exact use of English speech."

What Should the Petition Contain?

It should substantially comply with Rule 26 of the Supreme Court of the United States, and should—

> "be expressed in as brief and succinct terms as it rea sonably can be."

Daniels Ch. Pl., Vol. 1, p. *314, lays down the rule thus:

> "* * * in all cases the bill must contain as concisely as may be a narrative of the material facts, matters and circumstances on which the plaintiff relies."

On page *605, the same author states as to a petition, that it—

> "must state the material facts upon which the application is founded."

Pleadings.

What is the issue made by the pleadings?

Let us examine at some length the Petition and its prayers and the Answers.

The charges in the Petition by the United States (Record Vol. A, page 6) are that seven men named as defendants have engaged in a conspiracy to restrain interstate trade, and to monopolize such trade, in petroleum and its products; that in 1870 the original conspiracy was formed by John D. Rockefeller, William Rockefeller, and Flagler; that afterwards, between 1870 and 1882, Archbold, Payne, Rogers and Pratt joined them.

These seven men are the individual defendants named in the Petition. The Petition alleged that the original conspiracy formed in 1870 extended over the entire time from 1870 to the present date, and still exists. That it has been

> "* * * a continuing conspiracy, organized and controlled by the individual defendants herein, and has assumed various forms and devices, and has covered various periods." (Rec. A, p. 7.)

It is one identical, continuous conspiracy which the individual defendants originated in 1870, and have ever since continued. Whatever form it took, it was one which the seven individual defendants used as a means to carry it on. Now it was a partnership, now a limited partnership, now a corporation, and now a trust; but the Petition, with reiteration, avers that always it was the seven defendants as individuals in control. They may have used other men to help them, or all kinds of companies, combinations, corporations or trusts; but always it was the seven individuals who used them and were in control.

Referring to different pages of the Petition, we find the following averments:

> "That the defendants, John D. Rockefeller, William Rockefeller and Henry M. Flagler, in or about

the year 1870, and at all times since said time, together with the other individual defendants herein, who thereafter from time to time, between said time and 1882, joined said conspiracy, to wit, Henry H. Rogers, John D. Archbold, Oliver H. Payne and Charles M. Pratt entered into and have ever since been engaged in a conspiracy with each other, and with other persons, corporations, co-partnerships and limited partnerships, as hereinafter more particularly stated, to restrain the trade and commerce in petroleum, commonly called 'crude oil,' in refined oil, and in the other products of petroleum, among the several States and Territories of the United States and the District of Columbia and with foreign nations, and to monopolize the said commerce.

"That said conspiracy extended over the entire time since about the year 1870 until the present time, and still exists, and that the same finally in or about 1899 culminated in the corporate form of said conspiracy, hereinafter more particularly described, which has continued during each and every year until the present time between said individual defendants, the defendant Standard Oil Company of New Jersey, and the various other corporations, defendants herein, and that throughout said period from about 1870 to the present time, said conspiracy has been maintained for the purpose and with the effect of restraining the commerce in said products among the several States and Territories of the United States and the District of Columbia and with foreign nations; and for the purpose and with the effect of monopolizing the commerce in said products in and among the several States and Territories of the United States and the District of Columbia and with foreign nations, as hereinafter more particularly alleged; that said conspiracy has been a continuing conspiracy, organized and controlled by the individual de-

fendants herein, and has assumed various forms and devices, and has covered various periods, among the principal of which are the following:

"The period from 1870 to 1882; the period from 1882 to 1899, and the period from 1899 to the present time." (Rec. A, p. 6-7):

"* * * that said conspiracy has been a continuing conspiracy, organized and controlled by the individual defendants herein, and has assumed various forms and devices." (Rec. A, p. 7):

Without encumbering the record with further extracts, we refer also to the following pages of the Petition in Volume A: 7, 8, 9, 11, 12, 14, 16, 18, 19, 20, 31, 32, 37, 39, 41, 42, 43, 46, 49, 50, 57, 59, 60, 97, 98, 107, 110.

Answers.

Many answers have been filed, but they all agree in this:

Each unequivocally and broadly denies these averments of the Petition. They deny all charges that there ever was, by the appellants or any of them, a conspiracy in restraint of interstate or foreign trade and commerce in crude oil, or that any of the appellants had monopolized, or attempted to monopolize, interstate or foreign trade in crude oil and its products.

What is the Issue?

We have analyzed the Petition and read its charges and the appellants' answers, and we have seen that the issue is the charge made in the petition, denied in the answer, and re-asserted in the replication. It is that the seven individuals (repeatedly called throughout the petition the "individual defendants," being John D. Rockefeller, William Rockefeller, John D. Archbold, Oliver H. Payne, Henry M. Flagler, Charles M. Pratt and Henry H. Rogers), combined and conspired, and continued to combine and conspire at the time when this petition was filed, to restrain interstate trade in oil and to gain a monopoly of the same. It is reiterated on half of the pages of the petition. The conspirators are always identified as the "seven individual defendants," and it is averred that these individual defendants worked through various corporations and partnerships and limited partnerships, and the petition always alleges that these individual defendants controlled all these partnerships and limited partnerships and corporations, and used them as their tools to effectuate the conspiracy. The answer denies these averments.

It is not important here to deny and we assume (for sake of the argument) that if there was such a continuing conspiracy (?) as charged in the petition, each one of the corporations used by the seven individual defendants became a party to the conspiracy by aiding or abetting. The Court below said that—

> "* * * the alleged conspiracy is one. Its scheme is single. It has but one object." (*United States vs. Standard Oil Company*, 152 Fed. 294.)

Undoubtedly, then, this one alleged conspiracy is that charged in the petition (Rec. A, p. 6) as follows:

> "That the defendants, John D. Rockefeller, William Rockefeller, and Henry M. Flagler, in or about the year 1870, and at all times since said time, together with the other individual defendants herein, who thereafter, from time to time, between said time and 1882, joined said conspiracy, to wit: Henry H. Rogers, John D. Archbold, Oliver H. Payne and Charles M. Pratt, *entered into and have ever since* been engaged in a conspiracy with each other and with other persons, corporations, co-partnerships and limited partnerships, as hereinafter more particularly stated, to restrain the trade and commerce in petroleum, commonly called 'crude oil,' in refined oil and in the other products of petroleum among the several States and Territories of the United States and the District of Columbia and with foreign nations, and to monopolize the said commerce."

A *conspiracy originated by and continued* and controlled by these seven individual appellants is the only conspiracy charged in the petition. The answer denies such a conspiracy.

Stated in the form of a question, the issue is:

Does the proof show that these seven individual appellants, the two Rockefellers, Archbold, Payne, Flagler, Pratt and Rogers, at the time when this petition was filed, controlled the Standard Oil Company of New Jersey, which has been termed the "Holding Company," and through the Standard Oil Company of New Jersey, *controlled* all the other corporations, partnerships and limited partnerships named in

the petition, and by means of them restrained interstate trade in oil, and created a monopoly in that trade, contrary to the provisions of the Sherman Act?

The question primarily involves:

(1) Do the seven individual appellants *control* these partnerships and corporations?

(2) Do these seven thus controlling use these partnerships and corporations to restrain interstate trade in oil and gain a monopoly of such trade?

Finding of the Court Below.

"* * * evidence in this case too voluminous for recitation or review has convinced that prior to 1879 these seven defendants combined to secure and obtained the control of companies competing in interstate commerce in oil and suppressed their competition, that they caused the formation and execution of the trusts of 1879 and 1882, that they directed and followed that unique method of distributing the stock held in the latter trust by which it was not distributed to the majority of the stockholders for many years after 1892, while they and their associates held the control of it and of the corporations it commanded, that they caused the stockholding trust of 1899 and that by means of that trust they still hold the actual control and direction of the Standard Company and of its subsidiary corporations and that since 1899 they have been and still are engaged in carrying into effect and executing that trust." (Rec. A, p. 577).

We call special attention to the fact that the court has not found any conspiracy on the part of the seven to *unlawfully* restrict interstate trade or gain a monopoly. The

Court did not find that we had done any of the unlawful things charged in the petition and denied in the answer. The Court did not find that this combination prior to 1879 was a violation of the Sherman Act, or forbidden by any federal law. Its finding is that the seven—

> "* * * combined to secure and obtained the control of companies competing in interstate commerce in oil and suppressed their competition."

But that did not necessarily and unlawfully, directly, immediately and substantially restrict that trade. The suppression of competition was *after,* not *before,* the competing refinery was purchased and became part of the whole group, and *then* that condition of entering into and becoming one of a non-competitive group necessarily ended competition. Private traders may lawfully combine by joint ownership to eliminate a competitor, annex him as one of themselves, and thus suppress his competition, but they cannot do this by unlawful means. If by *lawful* means, it is neither technically nor substantially unlawful restraint of interstate trade.

We early call attention to the fact that the Court has not found fraud or force or unlawful acts on the part of appellants.

THE COURT ERRED IN THIS FINDING OF CT—

Evidence in the case as to the interests of the seven individual appellants and their control of the Standard Oil Company of New Jersey.

The evidence in the case shows that the seven individuals do not own at the present time, and did not own at

the time when the bill was filed in this case, a majority of the stock of the Standard Oil Company of New Jersey, or anything like a majority.

The appellants' Exhibit No. 1 (Vol. 18, p. 1) gives a list of all the stockholders of the Standard Oil Company of New Jersey on August 19th, 1907. From this we find that there have been issued 983,383 shares of stock, and that the seven individual appellants own the following number of shares each:

John D. Archbold (p. 3),	6,000	shares;
H. M. Flagler, (p. 29),	30,500	"
O. H. Payne (p. 63),	40,000	"
Charles M. Pratt (p. 66),	5,000	"
H. H. Rogers (p. 71),	16,020	"
John D. Rockefeller (p. 71),	247,692	"
William Rockefeller (p. 71),	11,700	"
Total,	356,912	"

This gives to the seven individual appellants between 36% and 37% of the total shares issued by the Standard Oil Company of New Jersey.

It is also shown by the evidence that the seven individual appellants constituted a minority on the board of directors of the Standard Oil Company of New Jersey.

Petitioner's Exhibit No. 8, offered in evidence by the Government itself (see Vol. 7, p. 53), gives the directors and officers of the Standard Oil Company of New Jersey and of the sub-companies for the year 1907. This Exhibit

shows the following directors of the Standard Oil Company of New Jersey (see Vol. 7, page 78):

John D. Rockefeller,	Charles M. Pratt,
William Rockefeller,	E. T. Bedford,
H. M. Flagler,	Walter Jennings,
John D. Archbold,	James A. Moffett,
H. H. Rogers,	C. W. Harkness,
Wesley H. Tilford,	Col. Oliver H. Payne,
Frank Q. Barstow,	John D. Rockefeller, Jr.,

A. C. Bedford.

The above list comprises fifteen directors in all, of which the seven individuals constitute a minority, the board standing seven to eight against them.

And it must not be forgotten that John D. Rockefeller had not for many years prior to 1906 been in active touch with the business.

See Vol. 16, pages 3183, 3192, 3202, 3225.

On page 3183 Mr. Rockefeller testified:

"* * * I have been out of this business for the last fifteen years."

II.

THE COURT BELOW ERRED IN HOLDING THAT THE TRANSFER IN 1899 TO THE STANDARD OIL COMPANY OF NEW JERSEY BY THE THEN OWNERS, PRIVATE TRADERS IN PETROLEUM AND ITS PRODUCTS, OF THEIR TITLES TO VARIOUS NON-COMPETITIVE REFINERIES, PIPE LINES, RESERVOIRS, TRADING STATIONS, TANK CARS, AND OTHER PROPERTIES JOINTLY USED BY THEM AS ONE PROPERTY IN THE PRIVATE TRADING BUSINESS OF THE ACQUISITION, TRANSPORTATION, MANUFACTURE AND SALE OF OIL, WAS OF ITSELF, AND REGARDLESS OF ANY ACT PRIOR TO 1899, OR SUBSEQUENT THERETO, A RESTRICTION OF INTERSTATE TRADE AND AN ATTEMPT TO MONOPOLIZE, BY UNLAWFUL MEANS, SUCH INTERSTATE TRADE, AND A VIOLATION OF THE SHERMAN ACT.

We submit:

(a) The Sherman Act permits trusts, combines, corporations and individuals to enter into and compete for interstate trade so long as they act lawfully, and the Act does not seek to regulate the method by which

the properties which make the articles entering into interstate trade shall be held; nor does it forbid those who enter into the trade from doing their business in the form of a trust or corporation or combine.

The method or form in which they carried on business was immaterial, provided they carried it on *lawfully*.

(b) The Court below eliminated from the case (for the purpose of its opinion), all the charges in the petition of fraud, force or unlawful conduct on the part of appellants. It also held that to constitute a crime under the Sherman Act the restriction of interstate trade must be direct, immediate, necessary and material. It did not pretend that the appellants in transferring their properties to the Standard Oil Company had any intent to restrict or monopolize interstate trade (except as inferred from the transfer itself).

(c) It is quite certain that the Standard Oil Company of New Jersey after 1899 *might* legitimately and properly compete for interstate trade. Undoubtedly the combination of the group of properties gave it a great power in so competing, but undoubtedly, too, the combination after 1899 might lawfully compete for the interstate trade and foreign transportation, *provided* it did not restrain such trade or by unlawful means seek to gain a monopoly contrary to the provisions of the Sherman Act.

(d) There is nothing in this case to show, and the court did not pretend, that after 1899 the combination *did* unlawfully compete; *did* unlawfully restrict interstate trade; *did* by unlawful means seek to monopolize the interstate trade; yet such evidence was indis-

pensable to prove that the combination was, in 1906, when the bill was filed, violating the Sherman Act.

See the Calumet & Hecla case:

Judge Knappen, 167 Fed., 709, 715.

Judge Lurton, 167 Fed., 727, 728.

See the opinion of Judge Gray in *United States vs. Reading Co., et al.*, decided Dec. 8, 1910; *infra*, page 83.

In disregard of the foregoing, the Court below did find against appellants, and we turn to the opinion to find out why and to ask,

What did the court decide?

What were the reasons given for the decision?

What Did the Court Decide?

The Court below puts its decision solely on the ground of the conveyance of 1899 to the New Jersey Standard Oil Company. This and only this, the Court said, was a violation of the Sherman Act under the decision in the Northern Securities Case.

The Court therefore *assumed* that prior to 1890 and in 1899 the 5,000 owners of the jointly held properties, partly evidenced by stocks directly held in the subsidiary companies and largely evidenced by trust certificates, were the lawful owners of a large group of then non-competing properties used in the oil business, and that in 1899 they were not, in so holding and in operating their plants, violating the Sherman Act.

Section 1 of the decree distinctly finds that the conspiracy to restrain trade began

"since the year 1890;"

not *before* 1890, but *after* it.

We, in another part of this brief, *discuss the position of these owners prior to and in* 1890, *and the validity of the Trust Agreement of* 1882; but now as we are solely concerned with the opinion of the Court below, and that Court ignored all acts prior to 1890 and assumed their validity, we have to do likewise to be fair to that Court.

The Court found nothing unlawful done by the appellants between 1890 and 1899, but placed its ruling solely on the transfer in 1899 to the Standard Oil Company of New Jersey.

It explicitly and directly decided this case on the authority of the Northern Securities Case (193 U. S. 197), and held that the former ruled the latter.

That the Court did so, look at the following:

The Court said:

"The acts of these and other defendants prior to July 2, 1890, did not violate the anti-trust act of that year because it was not then in existence. Whether or not their transactions constituted a violation of the common law is a question much discussed which it is *unnecessary* to determine in this case." (Rec., Vol. A. p. 577).

Again:

"Laying out of view the acts of the defendants prior to July 2, 1890, except as evidence of their purpose, and of their continuing conduct and of its effect, *do the*

stockholding trust of 1899 and its continuing operation constitute an illegal restraint of interstate or international commerce in violation of the Anti-trust Act of 1890?"

(Rec. Vol. A, p. 585):

"* * * the questions whether or not the charges in the bill that other unlawful means were or are employed are true, and whether or not the power of the court to prevent the existence or continuance of a monopoly is limited to the prohibition of the use of illegal means and their like have *become moot and it is unnecessary to express any opinion upon them.*"

(Rec. Vol. A, p. 579), the court considered the Northern Securities Company case, 193 U. S., stating what it was, and asserting that a—

"* * * group of stockholders subsequently transferred their controlling interest in the stock of each of these companies to the Northern Securities Company in exchange for its stock and the Supreme Court decided that this transaction constituted a combination in restraint of commerce among the states and affirmed a decree of this court which enjoined the continuance of its operation. The defendants and their associates acquired the control of a majority of the stock of more than thirty corporations many of which were potentially and naturally competitive, prevented their competition by means of this ownership, and then by the transfer of the stock of nineteen of them to the principal company in exchange for its stock placed in that company the control and management of all of them. If it was a violation of the anti-trust act to combine the control of competitive corporations in a third in the case of the Northern Securities Company, why was it not as much of a violation of it to combine the control of ten or

twenty or thirty of these corporations in one of their number in the case in hand?"

Again (Rec. Vol. A, p. 581):

"It is true that railway corporations owe duties to the public which do not rest upon trading, manufacturing and private transportation companies, such as the duty to operate continually their railroads and the duty to carry persons and property presented for transportation at reasonable rates, but the power of Congress to regulate interstate and foreign commerce and the exertion of that power manifested in the anti-trust act embrace all persons and corporations engaged in such commerce, as is amply illustrated in the various applications of the act which have been made in the several decisions here cited. The mischief against which that law was levelled is not less threatening from a vast combination of private corporations owning and using in interstate and foreign commerce property worth hundreds of millions of dollars than from a combination of two railway companies. The act makes no distinction between them, it excepts neither class and where Congress has made no exception it is not the province of the courts to do so. No countervailing reason overcomes these considerations and the vesting of the majority of the stock of many potentially competitive private corporations engaged in interstate commerce in a holding company which would be violative of the anti-trust act if made by the stockholders of railway companies of that character must be subject to the condemnation of that statute."

Again (Rec. Vol. A, p. 582):

"Counsel argue with persuasive force that the transfer of the stock of the nineteen corporations to the

principal company wrought no substantial restriction of competition because the owners of that stock had and exercised the same power of restraint before that transfer that was vested in the Standard Oil Company of New Jersey thereafter. But the power of the principal company after the transfer of 1899 to fix the prices at which the thirty corporations should buy and sell the articles in which they dealt, the terms of their purchases and sales, their rates for the transportation of oil and its products and all the infinite details of their vast operations in which they might compete and thereby to prevent their competition was greater, more easily and quickly exercised and hence more effective than it could have been in the hands of 3,000 scattered stockholders. The trust deed of 1879, the trust agreement of 1882, the withholding of the separate certificates of shares of stock in each corporation from the holders of the trust certificates in the dissolution of that trust until they took their shares in all of the corporations, bear convincing testimony to the soundness of this proposition. The combination formed by that transfer and its power to restrict competition were less liable to be destroyed, more reliable and permanent than those springing from the joint ownership by three thousand stockholders of each corporation. There is much more probability that corporations potentially competitive will separate and compete when each of their stockholders has a separate certificate of his shares of stock in each corporation which he is free to sell than when a majority of the stock of each of the corporations is held by a single corporation which has the power to vote the stock and to operate them. And although the group of stockholders led by Mr. Hill and Mr. Morgan had the same power to prevent competition between the two railway companies that the stockholders of these cor-

porations had to prevent competition between them, the Supreme Court held in the case of the Northern Securities Company that their transfer of their stock to the holding company granted to that corporation a power so much greater and more effective than that held by the stockholders of the railway companies that the necessary effect of it was a restriction of competition so direct and substantial that it made it an illegal combination in restraint of interstate commerce.

"Because the power to restrict competition in interstate commerce granted to the Standard Oil Company of New Jersey by the transfer to it of the stock of the nineteen companies and of the authority to manage and operate them and the other corporations which they controlled was the absolute power to prevent competition among any of these corporations, because this power was greater, more easily exercised, more effective and more durable than that which the three thousand stockholders of these corporations previously had, because many of these corporations were potentially competitive and were engaged in interstate commerce and the necessary effect of the transfer of the stock of the nineteen companies to the holding company was, under the decision in the case of the Northern Securities Company, a direct and substantial restriction of that commerce, that transfer and the operation of the companies under it constituted a combination or conspiracy in restraint of interstate and international commerce in violation of the anti-trust act of July 2, 1890."

Judge Hook in his concurring opinion said (Rec. A, p. 587):

"The principal conclusions upon which we are all agreed may be briefly stated as follows: A holding company owning the stocks of other concerns whose commercial activities if free and independent of a common

control would naturally bring them into competition with each other is a form of trust or combination prohibited by section 1 of the Sherman anti-trust act. The Standard Oil Company of New Jersey is such a holding company. * * * A wrongful method employed to gain the monopoly is found to exist in the unlawful combination above mentioned and it therefore becomes unnecessary to determine the other charges upon that subject in the petition of the Government."

In the decree, Section 1, the Court found that the conspiracy began not in 1870 or 1882 or prior to 1890—but

"since the year 1890."

The words are:

"* * * that since the year 1890 the defendants named in Section 2 of this decree have entered into and are carrying out a combination or conspiracy in pursuance whereof about the year 1899," etc.

The court, then, considers *only* the stockholding trust of 1899 and what it did. It ignores and thereby assumes the validity of the trust of 1882. That trust was ended in 1899, and now the Court turns to the new one of 1899. That this new one is invalid under the Sherman Act, the Court says, was ruled by this Court in the Northern Securities Case, and quite an argument follows to prove this. Then the Court sums up its conclusion in this language:

"Because the power to restrict competition in interstate commerce granted to the Standard Oil Company of New Jersey by the transfer to it of the stock of the nineteen companies and of the authority to manage and operate them and the other corporations which they controlled, was the absolute power to prevent competition among any of these corporations because this power

was greater, more easily exercised, more effective, and more durable than that which the three thousand stockholders of these corporations previously had, because many of these corporations were potentially competitive and were engaged in interstate commerce, and the necessary effect of the transfer of the stock of the nineteen companies to the holding company was, under the decision in the case of the Northern Securities Company a direct and substantial restriction of that commerce, *that transfer and the operation* of the companies under it constituted a combination or conspiracy in restraint of interstate and international commerce, in violation of the Anti-trust Act of July 2, 1890." (Rec. A, p. 583.)

WHAT WERE THE FACTS WHICH THE COURT FOUND?

The Court briefly sketched the development of the Standard Oil Company beginning in 1865 with the firm of Rockefeller and Andrews, as the owner of a refinery in Cleveland, Ohio, down through several successive firms to the organization of the Standard Oil Company of Ohio in 1870, and the acquisition by it between 1870 and 1879, of forty other refineries located in various places, during which period Mr. Rogers, Mr. Archbold, Mr. Payne and Mr. Pratt joined Rockefeller and Flagler in the oil business. On April 9, 1879, the stockholders of the Standard Oil Company of Ohio were the equitable and exclusive or majority owners—

"in the property and business of more than thirty companies engaged in the oil business." (Rec. A, p. 574.)

On April 9, 1879, the legal and equitable title to all these properties was conveyed to Vilas, Keith and Chester—

> "* * * in trust to hold and manage them for, and to divide and distribute them among, the thirty-seven stockholders of the Standard Oil Company in proportion to their respective holdings of the stock of that company." (Rec. A, p. 574.)

These trustees, the Court finds, managed these properties—

> "* * * and with their earnings purchased other property and the stock of other companies until in 1882 they held in this trust property worth more than $55,000,000.00."

In 1882 the legal and equitable owners of all these properties—

"entered into a trust agreement to the effect that"

all said properties were conveyed to nine trustees during their lives and the life of the survivor of them, and for twenty-one years thereafter, unless the trust was sooner dissolved by vote of the *cestuis que trustent;* and the trustees were given power to vote stocks held by them and manage and operate the properties and—

"buy with the trust funds"

bonds or stocks of other companies engaged in a like business, and divide among the *cestuis que trustent* the profits.

Six of the individual defendants in this case were among the trustees, and these trustees issued to their *cestuis que trustent* certificates of the par value in the aggregate of $97,250,000.00.

In March, 1892, the Supreme Court of Ohio ousted the Standard Oil Company from power further to perform the trust agreement.

The details of the dissolution of that trust are then given with the assertion that—

> "the individual defendants, however, and their more intimate associates * * * secured to themselves the control and management of all the companies in that way until the year 1899." (Rec. A, p. 575.)

The Standard Oil Company of New Jersey, organized in 1882, one of the constituent companies in that trust and itself owning and operating refineries called the Bayonne, at Bayonne, New Jersey, the Eagle Works at Communipaw, New Jersey, the Camden Consolidated refinery at Parkersburg, West Virginia, and a refinery at Baltimore, Maryland, had its charter powers enlarged in 1899 to include holding of stocks in other companies, and its capital increased to $100,000,000, and the above described trust certificates and other properties were exchanged for the stock of the Standard Oil Company of New Jersey, which company—

> "* * * succeeded to the legal title to the majority of the stock of the nineteen companies and thereby to the management and control of those companies and of all the companies which they controlled." (Rec. A, p. 576.)

From 1899 to the filing of the present Bill in 1906—

> "* * * the affairs of the principal company and of the subsidiary companies have been managed by the former as the business of a single person." (Rec. A, p. 576.)

The par value of the capital stock of the underlying companies in 1899 was about $100,000,000.00; in 1903 more than $150,000,000. The New Jersey Company, through its stock ownership, is the owner of sixteen refineries,

besides several directly owned by the said company and used in refining illuminating oil and other products of petroleum; twelve transportation companies, which owned in 1899 only 10,749 miles of gathering lines as compared with 45,227 in 1908; and 3,904 miles of trunk lines in 1899, as compared with 9,338 miles in 1908, capable of transporting oil from one state to another; and six marketing companies with 3,574 selling stations, and several producing companies.

The New Jersey Standard Oil Company, by itself and its subsidiary companies, from 1899 to 1907 produced more than one-tenth (1-10) of the crude oil obtained in this country; transported more than four-fifths (4-5) of the petroleum derived from the Pennsylvania and Indiana oil fields; refined more than three-fourths (3-4) of all the crude oil refined in this country; owned and operated one-half of all the tank cars; marketed more than four-fifths (4-5) of the illuminating oil sold; exported more than four-fifths (4-5) of all the illuminating oil sent forth from the United States; sold more than four-fifths (4-5) of the naphtha; and sold more than nine-tenths (9-10) of the lubricating oil sold to railroads.

The Court further stated that the Standard Oil Company of New Jersey—

> "* * * by means of this trust and the commanding volume of the oil business which it acquired thereby, secured, and it has since exercised and is using, the power *to prevent competition between the companies it controls*, to fix for them the purchase price of the crude oil, the rates for its transportation, and the selling prices of its products. It has prevented and is preventing any competition in interstate and international commerce in petroleum and its products *between its subsidiary companies and between those companies and itself.*" (Rec. A, pp. 576-577.)

That the seven individual defendants—

> "* * * caused the stockholding trust of 1899, and that by means of that trust *they* still hold the actual control and direction of the Standard Company and of its subsidiary corporations and that since 1899 *they* have been and still are engaged in carrying into effect and executing that trust." (Rec. A, p. 577.)

The Court then *eliminated* from its consideration the acts of the defendants *prior to July* 2, 1890, and the question whether those acts did or did not constitute a violation of the common law, reserving the right to consider such acts as evidence of a purpose in similar business transactions since that date.

The Court eliminated *all* acts *prior* to July 2, 1890; not *some*, but *all*.

The Court placed its ruling squarely on the ground that the transfer to the Standard Oil Company of New Jersey in 1899 was of itself a violation of the Sherman Act.

Prayers of the Government's Petition.

It is plain that the Court did not decide this case on the ground upon which the Government in its petition and brief asked it, i. e., that the Trust Agreement of 1882 was, when made, void as a restriction of competition as tending to a monopoly; that it was void under the Sherman Act, and, as the Standard Oil Company in 1899 only succeeded to the properties of the trustees, and as they did continue to carry on such business, they restricted competition; that the appellants did certain alleged illegal things there enumerated. The Court declined to do so, declined to find the facts so

State vs. Nebraska Distilling Co., 29 Neb., 700 (1890).

This case involved the Whisky Trust. A number of independent competing distilling corporations formed an association called "The Distillers' and Cattle Feeders' Trust." The stockholders of each corporation exchanged their shares for trust certificates.

The court found as a fact that the purpose of the association was

> "to control and restrict the production of high wines, alcohol, spirits and other liquors, and to regulate and fix the prices of such productions in the markets of the United States, and to prevent competition in the manufacture and sale of such wines, alcohol, spirits and liquors." (p. 704).

The proceeding was by *quo warranto* against a corporation of the state, and judgment forfeiting its franchises was awarded on the ground of *ultra vires* as well as of monopoly.

Distilling & Cattle Feeding Co. vs. People, 156 Ill., 448 (1895).

This case also involved the Whiskey Trust.

After the decision in the preceding case, the properties controlled by the trustees were transferred to a new corporation, organized under the laws of Illinois, which issued its stock in exchange for the trust certificates.

In a proceeding by *quo warranto* against this corporation judgment of ouster was given.

The Court said:

"There can be no doubt, we think, that the Distillers' and Cattle Feeders' Trust, which preceded the incorporation of the defendant, was an organization which contravened well-established principles of public policy, and that it was therefore illegal. No one who intelligently considered the scheme of this trust, as detailed in the information, can for a moment doubt that it was designed to be, and was in fact, a combination in restraint of trade, and that it was organized for the purpose of getting control of the manufacture and sale of all distillery products, so as to stifle competition, and to be able to dictate the amount to be manufactured and the prices at which the same should be sold, and thus to create, or tend to create, a virtual monopoly in the manufacture and sale of products of that character." (p. 486)

People vs. Chicago Gas Trust Co., 130 Ill., 268:

This case involved a combination of four separate and independent gas companies, which were all the companies furnishing gas in the city of Chicago. The Chicago Gas Trust Company, a new corporation formed for the express purpose of acquiring control of these four companies, purchased, and issued its stock in exchange for, a majority of the stock of each of them.

The court held the trust company illegal because:

"The control of the four companies by the appellee, —an outside and independent corporation—suppresses competition between them and destroys their diversity of interest and all motive for competition. There is thus

built up a virtual monopoly in the manufacture and sale of gas. * * * Whatever tends to prevent competition between those engaged in a public employment, or business impressed with a public character, is opposed to public policy, and, therefore, unlawful. Whatever tends to create a monopoly is unlawful as being contrary to public policy."

Harding vs. American Glucose Co., 182 Ill., 151, 64 L. R. A., 738:

Six competing corporations, which, with the exception of one other small concern, were all the companies engaged in the manufacture of glucose in the United States, contracted to sell their plants to a new corporation, and each further covenanted not to engage in such manufacture for a term of years.

The court, in holding this combination unlawful, said:

"The transfer of its property, made by the American Glucose Company, was a transfer to a corporation, created for the express purpose of taking its property, and the property of other corporations, so as to use them in the *suppression of competition,* and in the creation of a monopoly in the manufacture of glucose and grape sugar and their products and by-products. The whole scheme, as devised and consummated, was a fraud, not only on the public, but upon the dissenting stockholder filing this bill."

Dunbar vs. American Telephone Co., 238 Ill., 456:

A minority stockholder filed a bill to restrain the sale of a majority of the stock of his company to a competitor,

alleging that the purpose was to destroy the business of his company. In sustaining the bill, the court said:

> "* * * it sufficiently shows, against a general demurrer, that the American Company, through the defendant Barton and others, became the purchaser of the shares of stock with the unlawful purpose and intention of putting the Kellogg Company out of business, or so using and controlling it as to prevent rivalry in business and creating a monopoly, and it called for an answer from defendants. If such was the purpose and object of the purchase, the decisions of this court are full to the effect that the law will not lend its aid to accomplish the object."

National Lead Co. vs. Grote Paint Store Co., 80 Mo. App., 247, 269:

This case was decided, *not at common law,* but under a statute, making it unlawful for any individual or corporation to

> "create, enter into, become a member of or a party to any pool, trust agreement, combination, confederation or understanding with any other corporation, * * * individual or any person"

to regulate prices or production of any commodity.

A majority of the stockholders of each of thirty separate and independent corporations, constituting a large majority of the lead dealers of the United States, had exchanged their stocks for certificates issued by trustees. Later a new corporation was organized which issued its stock in exchange for the trust certificates. The organization of this corporation was held to violate the statute, because it was but a continuation of the illegal trust, and that the trust

"* * * was an unlawful combination, both in purpose and fact, is sufficiently established by the nature of the agreement under which it was created and the methods and practices resorted to in furtherance of that agreement. The agreement in question can only be construed as a contract to suppress competition, fix the price of commodities, and limit their production, and to restrain trade."

(4) In each of those cases there was the combination of pre-existing, independent corporations, and in no case was there any pretense that the trust agreement was used merely for the purpose of the more easily handling an already existing, non-competing unit or business which had been fostered and nurtured from its beginning, and where the trust agreement was used merely for convenience in the handling of property already jointly owned. In our case it had no purpose of preventing competition or fixing prices or controlling production. It was simply and only a convenient method of holding properties in the evolution and development of a legitimate, lawful business in the manufacture, transportation and sale of oil.

The Keith and Chester trust of 1879 and the trust of 1882 were not means for the acquisition of competing properties. All the properties (substantially) that were conveyed under those trusts were properties owned and acquired long before the trusts were organized. When conveyed, they were non-competitive, lawfully owned and organized groups of properties used in a single industry.

AS THIS CASE IS UNDER THE FEDERAL LAW OF 1890, WHICH RELATES SOLELY TO INTER-STATE AND FOREIGN TRADE, AND THE PRODUCT ALONE OF THE PHYSICAL PROPERTIES IS PUT INTO SUCH TRADE, THE MERE METHOD OF HOLDING THE PHYSICAL PROPERTIES IS NOT CONTROLLING.

In this case, these properties and the rights of the trustees to hold them are not directly involved, because the only thing that has entered into inter-state commerce is the crude and refined oil; the refineries and producing oil wells and pipe lines have never entered into inter-state commerce. They are all state constructions and owned under the laws of the different states in which they are located. Now admitting, *arguendo*, that the Trust Agreement of 1882 was against the policy of the State of Ohio, that state never did declare that the title to the property was in any way vitiated or taken away from the owners of the property by this conveyance in 1882. There never has been a forfeiture declared or even suggested. All that enters into inter-state trade is either the crude oil produced at the wells or the refined oil and its products, which in part, and in great part, depends upon the use of the producing oil wells and the refineries. No one supposes, that even if A B owns the title to a refinery or a steel mill or other manufacturing property, because his title to the real estate might be defective, he did not have title to the things produced by the use of it: as, for example, refined oil and its products, or steel rails. Especially is this true as to the federal law. The United States does not examine the title and the methods by which the property put into inter-

state channels is acquired. It does not demand of the person who is engaged in inter-state trade that he show the abstract of title to the things which he is transferring. Indeed, it does not concern itself with the title at all, and the regulations which Congress may make as to inter-state trade do not, as the *Knight Company Case* fully shows, extend to the question of the acquisition and ownership of the real estate and property located in the states, because that is not part of commerce between the states.

THE PRESENT CASE IS UNIQUE AND DIFFERENT FROM EVERY OTHER CASE DECIDED UNDER THE SHERMAN ACT, AND IT IS NOT OBNOXIOUS TO OR RULED BY ANY ONE OF SUCH CASES.

The cases decided by the Supreme Court of the United States may be put into groups:

1. Cases where the different railroad companies charged with the duty of carrying inter-state traffic for all alike, and competing for that traffic, by formal contracts agreed not to compete, not to fix competitive rates, but to appoint a committee or some agent to settle a common price for all. This was held to be a violation of the Sherman Act, because it restricted or stifled competition.

Such cases are the *Trans-Missouri Case*, 166 U. S., 290, and the *Joint Traffic Case*, 171 U. S., 505.

Really the *Northern Securities Case*, 193 U. S., 197, falls under this class, for, as the Supreme Court of the United

States decided, it was held to be an agreement between the stockholders of two competitive railroads to suppress competition between them by practically consolidating the two railroads, and hence was void under the Sherman Act because it stifled competition.

2. Cases where different individuals and corporations engaged in inter-state commerce, and competing theretofore, entered into a combination whereby they agreed that they would not compete with each other; that they would not fix competitive prices, but, by various devices differing somewhat in the different cases, a uniform price was to be established which would govern all the members of the combination. But in each case the marked features were:

(a) The competing traders agreed by formal contract to compete no longer;

(b) They agreed that the prices for all the competitors should thereafter be fixed without competition and by a selected body;

(c) They provided divers means by which others were prevented from competing for the trade; but chiefly they were fixing prices and controlling production;

(d) Devious and, in most cases, unlawful devices were used and approved by the combination;

(e) In each case the agreement was made or actively continued after the Sherman Act was passed;

(f) In no one of the cases did independent competitors merge into a partnership or corporation.

Such cases are:

The Addyston Pipe Case, 175 U. S., 211 (Pipe);

Swift & Company vs. United States, 196 U. S., 376 (Beef);

Cincinnati Packet Co. vs. Bay, 200 U. S., 179 (Packets);

The Chattanooga Foundry Co. vs. Atlanta, 203 U. S., 390 (Pipe); (this case grew out of the Addyston Pipe case);
Montague vs. Lowry, 193 U. S., 38 (Tile).

In all of these cases the facts were held to show restraint of competition, and therefore void under the Sherman Act.

3. *The Northern Securities Cases:*
Northern Securities Co. vs. United States, 193 U. S., 197;
Harriman vs. Northern Securities Co., 197 U. S., 244.

We have at length (pp. 32-46) considered the Securities Case and shown the broad difference between it and the present case. Hence, we only refer to it briefly here. The method of the combination in this case was different, but in reality that constitutes the sole distinction between it and the Trans-Missouri and the Joint Traffic Cases, for in the Northern Securities Case, as in those two cases, the owners of the Great Northern and the Northern Pacific railroads made a combination in restraint of interstate trade. Each of these railroads was a common carrier, bound to carry for all alike and at reasonable prices, and each was the competitor of the other for a large amount of the freight in the northwestern portion of the country.

The Supreme Court in the *Pearsall Case* had held that to combine the stock of the two competing railroads would be illegal.

The stockholders did attempt to do so through a New Jersey corporation, and the Court held a New Jersey corporation could not authorize them to violate a federal law.

In our case we do not rely on the New Jersey corporation to give us rights we did not possess before or to authorize us to violate a federal law.

We use the New Jersey Standard Oil corporation merely as a convenient method of holding our property, not to gain a new power—not to smother competition.

Direct, Immediate, Substantial.

4. Only combinations which directly and immediately and necessarily and substantially restrain interstate trade or commerce are within the provisions of the Sherman Act. Attempted state monopolies, as in the *Knight Case,* or combinations restricting the liberty of the individuals as to local state traffic, which only indirectly affect interstate trade, are not within the act.

United States vs. Knight & Co., 156 U. S., 1;
Hopkins vs. United States, 171 U. S., 579;
Anderson vs. United States, 171 U. S., 604;
Field vs. Barber Asphalt Co., 194 U. S., 618;
Cincinnati Packet Co. vs. Bay, 200 U. S., 179.

5. Another class of cases is where there was a direct combination to restrain by force persons engaged in inter-state trade or commerce, and these were held to contravene the Sherman Act.

In re Debs, 158 U. S., 564. (Though this case was not decided by the Supreme Court of the United States strictly under the Sherman Act.)

Loewe vs. Lawlor, 208 U. S., 274 (the Hatters' case).

6. Then comes a class of cases in reference to the enforcement by a combination of a contract of sale, and

here the distinction is that if the sale (as in the *Connelly Case*) is only an incident of the combination, and the suit to maintain it does not require the proof of the combination, and the plaintiff's right to recover does not lie through the combination, the combination may recover. But if, on the other hand (as in the *Wall Paper Case*) the action involves the combination itself and it becomes part of the plaintiff's case, and in order to recover the plaintiff has to prove the combination, then there can be no recovery.

Connelly vs. Union Sewer Pipe Company, 184 U. S., 540;

Continental Wall Paper Co. vs. Voight, 212 U. S., 227.

7. There are also cases where (as in the *Harrow Case*) the exclusive feature was granted by patents, and the contract was in pursuance of the exclusive right given by patents; also analogous cases where the exclusive feature is secured by secret processes or secret information.

Bement vs. National Harrow Co., 186 U. S., 70;

Board of Trade vs. Christie Grain & Stock Co., 198 U. S., 236.

The case at bar is not ruled by or like unto any one of the cases above cited.

The *Tobacco Case,* 164 Fed., 701:

As that case has been argued and is now before this Court, it would hardly be proper to discuss it. We but call attention to its marked and controlling characteristics as compared with those in this case.

OUR CASE SHOWS THE ORDERLY DEVELOPMENT OF A NEW AND UNIQUE INDUSTRY WHEREBY A NEW PRODUCT (CRUDE OIL) HAS BEEN HANDLED IN A MASTERLY MANNER AND THE WORLD AT LARGE FURNISHED, AMONG OTHER THINGS, WITH THE BEST AND CHEAPEST LIGHT IT HAS EVER KNOWN.

THE CASES HERETOFORE DECIDED BY THIS COURT WERE THOSE OF COMBINATIONS OF COMPETING AND SEPARATELY OWNED PLANTS, WHEREBY PRODUCTION HAS BEEN DECREASED, PRICES HAVE BEEN RAISED, AND THE PUBLIC HAVE BEEN HARMED.

In our case there is an orderly development and growth, beginning in 1862, of a hitherto practically unknown product —crude oil. Everything about it was new—unknown—uncertain. How it was produced, no one knew, indeed now knows. The rapidity of its production was and is unknown. The places where it will be produced—the quantities which any territory or any well will produce, were and still are mysterious. Production leaps from Pennsylvania to Ohio—to Kansas—to California—to Texas, and no one can foretell the place or quantity or quality of new production.

The uses to which the crude product could be put were unknown. By-products of the crude oil were at first thrown away as useless, but are now numerous and of great value. Methods of refining the oil, at first as crude as the product, were gradually improved, and thereby a larger quantity of better quality oil was produced.

The business required large capital to carry it on successfully—to devise new methods of refining and of transporting and of storing the oil. The risk of the business was enormous, —uncertainty of production—uncertainty of quantity of production—uncertainty of quality of production—were all marked. Cessation of crude oil capable of refining meant the loss of practically the entire investment. The chances of fire and of loss by evaporation, etc., etc., added to the risk.

It was a business whose proper development required a large, well capitalized, efficient company, and only by such could it be properly handled.

It is undisputed that, starting in 1862 in a small way, with small capital, John D. Rockefeller, subsequently joined by others, by untiring energy, remarkable skill, abundant capital, necessary and continuous toil, began a business which he and they nurtured and developed, and which grew to the size it is today. The law of competition governed the strife and gave the award.

In the case at bar the joint ownership of properties was formed *long prior* to the Sherman Act, and the properties were owned long prior to that date (with trivial exceptions noted). The combination was simply and only a joint ownership of property by a number of individuals. There was no covenant between them not to compete; there was no covenant by which a standard price could be fixed or production controlled; there was no covenant for division of territory; and no agreement to prevent others from joining in the trade. It was simply and only the joint ownership of different parcels of property used in the same business where the economic

laws governing such property, *and the use of the same* would, as a rule of trade, dictate to a large extent the modes of carrying on the business.

At the time when the Sherman Act was passed none of these properties were competitive. That they have not since become competitive, we consider and prove elsewhere. The only properties purchased by these joint owners since the passage of the Sherman Act are given in the Brief on Facts.

The properties being owned jointly and in a common interest, were not required by any law to compete with each other any more than the members of a partnership could be required so to do.

The Sherman Act did not compel such competition. Nothing is more common among joint traders than a covenant that each trader will give all his energies to the joint business. In partnerships such a covenant is most usual. The growth of the group of non-competing properties owned in 1890 has been the natural, healthy inevitable result of a unique business, carried on with great skill and attention to details, where every economic rule was adopted and carried out which enabled the joint owners of the property to utilize the same, not only to the great benefit of the public, but to the legitimate enrichment of themselves. The joint group did engage in a war of competition, but its warfare, and its means of warfare, and the weapons that it used, were not different from or other than those used by its adversaries when opportunity offered.

Prices were from time to time cut, but generally to meet the tactics of the adversary. The group endeavored to

thoroughly understand the oil business in all its branches, including the customers and tradesmen of its adversaries, as do all business men in different lines of business in which each is engaged. The group did endeavor to attract to it customers of the adversaries, as did the adversaries those of the group.

These defendants were not *quasi* public corporations like railroads owing peculiar duties to the public, but private traders.

We especially refer to the Brief on Facts as elaborating and proving our developments.

When the Trust Agreement was dissolved in 1892, there was no separate conveyance by the Trustees to any one of the cestuis que trustent of any particular thing, i. e., particular piece of property. All of the stockholders, or rather the cestuis que trustent under the trust agreement of 1882, still jointly owned, as they did before, all the property; and it was this jointly owned property which was conveyed in 1899 to the Standard Oil Company of New Jersey. This property was not competitive before the dissolution, and the proof is overwhelming that there was no change in the method of the management of the property.

The petition in this case alleges (Rec. A, p. 39) that the liquidating trustees named in the resolution of 1892 dissolving the trust were the same as the trustees under the Agreement of 1882, and that, with the exception of $1,579,400 worth of property, the trustees, after the dissolution in 1892, continued to unlawfully hold and control all of said property, and that none of it was returned to the original owners; and that (p. 39)

> "said individual defendants continued their control and *joint ownership* and the conspiracy to control the business of said separate corporations."

And on page 40, the dissolution is said to be a *pretended dissolution;* and on page 41, is the following averment:

> "That during the said time from 1892 down to January, 1899, and notwithstanding the said decision declaring the said trust agreement void and ousting the

Standard Oil Company of Ohio from the right to make said agreement and to perform the same, and notwithstanding the pretended dissolution of said trust, the individual defendants in this action, who were liquidating trustees, *did continue to manage the affairs of all said separate corporations so engaged in said business in the same manner as they had theretofore,* under and by virtue of the terms of said trust agreement, and in violation of law, and continued to elect and did elect and designate the directors, managers, and officers of all of said corporations, for the purpose and with the effect of suppressing and restraining commerce," etc.

Again on page 42, the petition alleges that

"in continuation"

of the original conspiracy and for the purpose of making that more effective, in the month of January, 1899, the individual defendants caused the charter of the New Jersey corporation to be amended and (p. 43),

> "The object of forming said corporation was to acquire the stocks and control of each and all of said corporations and other corporations engaged in like business, and for the purpose of operating and controlling said corporations and other corporations in the same manner as had been done by the individual defendants through said trust agreement."

The allegation then follows that the individual defendants controlled the New Jersey corporation in the same manner as they did under the trust agreement of 1882, and used the New Jersey corporation as one of the means and methods of carrying out the original conspiracy. On pages 46 and 47 it was distinctly alleged that the Standard Oil Company

of New Jersey was engaged in producing, purchasing and transporting petroleum in different ways and selling it (p. 46):

> "The said individual defendants, through the said Standard Oil Trust and Standard Oil Company and their said various subsidary corporations, have, therefore, during each and all of the years since the organization of said Standard Oil Trust in 1882 and of said Standard Oil Company in 1899, been engaged in and are now engaged in interstate commerce."

For the Government now to claim that there was a break in this continuity of ownership and control, and that after the dissolution of 1892 there was a distinct and independent ownership of the different companies, and that the different companies became competitive with each other, is utterly inconsistent with their own petition and their allegation in the petition as to what their case is.

The testimony of John D. Rockefeller (Vol. 16 pp. 3190-3193) is attempted to be used to prove (which proof would directly contradict the allegations of the Government in its petition) that after the dissolution the companies were independent and competing. But if the testimony of Mr. Rockefeller is read as a whole, and especially his testimony on page 3191 down to page 3193, it will be seen that what he testified to was (what was a fact) that while all these *cestuis que trustent,* under the agreement of 1889, were still the joint owners of all these different properties (p. 3193) yet, in one sense, each one of the different corporations in each one of the different States did do its separate and independent business, as for example, the refining of oil and the sale of its own product.

Thus Mr. Rockefeller testified (p. 3193), as follows:

"I suppose that as a matter of fact these companies, all being owned by the same people, would not be managing their separate businesses, except in the way that would be most productive for all the separate businesses. * * * Well, each company does continue to manage its own business to-day, *as I understand it.* * * * If a company is organized under the laws of the State of Ohio, it is an independent corporation; and that if it is organized to conduct that business that is its function, that is what it is expected to do."

Again, on p. 3194, he said:

"The control of those different companies in each case was, as I have stated, by the stock holdings, and those companies were *then, as now,* in this common ownership.

Q. After the dissolution the ownership was not the same as before the dissolution, was it?

A. There was no change of interest of the parties concerned; that is, every man had just the precise proportion of all this business that he had had before, and so fast as these trust certificates were cancelled, then, instead of having one certificate to represent that same precise interest, he had an interest in each one of those companies."

It is true, as Mr. Rockefeller testified, that there never was any agreement between the joint owners of the property; that, for example, the Standard Oil Company of Ohio should not sell its oil within a territory, say of the Standard Oil Company of Kentucky, and in that sense it is still true, but

economic laws really govern that and define the competitive territory for each corporation.

This attempt, then, to vary the charges in the bill and to attempt by evident misapprehension of Mr. Rockefeller's testimony to prove the existence of distinct and independent and competing properties after 1892 must utterly fail.

RE-STATEMENT OF MOST MATERIAL POINTS.

First. To prove as against private traders a restraint of trade under Section One of the Sherman Act, you must prove an actual restraint, not a mere attempt to restrain. (*The rule is probably different as to quasi-public corporations, such as railroads.*) That restraint must be by contract or combination or conspiracy. It must be of inter-state trade and must be direct, immediate and substantial. The mere restraint which necessarily follows from the lawful gains of competition is not a violation of the Sherman Act, for if so, competition would be killed and the purpose of the Sherman Act defeated.

Second. To prove a monopoly under Section Two, you must prove that the individual or combination gained the control of inter-state trade in oil, or attempted to gain the same, by unlawful means. If such gain was made or attempted to be made by lawful means, the law allows it, and the very purpose of the Sherman Act was to protect it and further it, for the Act made competition free. The size or magnitude of the business is immaterial if

no unlawful means are used in the competition by which it is acquired. As bearing on the question of the lawfulness of the means employed in gaining control of the oil trade, one has to take into view the economic situation, and here it will be seen that the evolution of such a combination as the Standard Oil Company was a necessary and inevitable consequence of the laws of trade as applied to such a unique and unparalleled industry as the production and refining and sale of crude oil and its products.

THIRD. Any competitor in trade may buy the business of another or of as many others as he can, and for the express purpose of getting rid of their competition. If by the lawful means of competition he compels them to sell to him, it is legitimate gain.

Competition knows no restriction except that the means used shall be lawful. The question of whether it is fair or unfair, or due or undue, or reasonable or unreasonable has nothing whatever to do with it. The sole test is: Were the means used in competition lawful?

The law encourages and rewards the successful competitor, and as a reward gives to him the power he has captured, *i. e.*, to fix prices, exclude by lawful means others from the trade. But as the trade is never the same, but always new, as spring or summer or fall trade, the future trade must be left open to just such competition as was the captured trade, and the same combinations, the same trust corporations and combines and individuals may compete for it as before.

FOURTH. And the test of lawfulness in the inter-state trade is not the State law, statutory or common, but it is the

Federal law, and it is the Federal law within the commerce clause of the Constitution. To point out that any given thing done by the defendants in the gaining of the so-called monopoly was unlawful and criminal, the Government must show some Federal law which made it so. The thing charged in this petition is a crime. There are no crimes under the Federal law except that which Congress declares, and therefore only Congressional Federal legislation can be relied upon by the Government in proof that the defendants had committed a crime in attempting a monopoly prior to the Sherman Act of 1890.

The individual defendants are not only citizens of the United States, but they are citizens of the State in which they reside. Each sovereign has a distinct and independent jurisdiction, and neither relies upon nor carries out the laws of the other. The action of these citizens of the United States in inter-state trade prior to 1890 and subsequently must be tested by Federal laws; and it is wholly indifferent that their actions might have been in conflict with any of the laws of any of the States.

Fifth. The right of the individual as a citizen of the United States to freely engage in the inter-state trade antedates the constitution.

It has no constitutional limitation; it can be restrained only by Congressional action; and there was no such Congressional action prior to 1890 when the Sherman Act was passed. The federal courts cannot of themselves restrict that liberty except as the result of Congressional action.

SIXTH. The trust agreement of 1882 when it was made was not of itself and *per se* illegal under the common law, either state or federal. It was made for the more economic and convenient management of the joint properties used by the Standard group in the oil business; it was lawful. It has not been shown it was made for any other purpose. The mere method in which joint traders will hold their joint properties is not prescribed by the Sherman Act. All methods are, under it, lawful, but none of them may be used to violate the Act by restraining trade or unlawfully forming a monopoly.

SEVENTH. The Agreement of 1882 was not a violation of the Sherman Act unless it was used to restrain trade or monopolize by unlawful means a portion of it. The change from the method of holding under the Trust Agreement to that of a corporate holding is not unlawful under the Sherman Act, unless such method is used for the unlawful purpose of violating the Sherman Act.

EIGHTH. Joint owners of properties used in private trade are not bound to compete with each other, and the mere fact that if separately owned they might so compete, is not a violation of the Sherman Act.

As such private traders, we could sell to whom we chose, and refuse to sell to others; we could sell to one man at one price, to another at a greater or less price; we could unite what businesses we chose; we could refuse to sell to any one; we could buy our crude product from whom we chose and for what price we chose, more or less than the market price.

NINTH. Certain important things should not be overlooked:

(a) The point of time we are inquiring about is November 15th, 1906, when the Petition was filed.

(b) In this mode of proceeding in equity the sole question is, Were the defendants violating the Sherman Act on November 15th, 1906?

(c) Prior violations, if any, are immaterial; alleged improper acquisitions of refineries are not involved here; alleged prior acceptances of rebates are not involved here.

(d) Alleged examples of unreasonable or even illegal means used in competition prior to November 15th, 1906, are irrelevant, unless the unlawful things be shown to have actively continued when the petition in this case was filed.

(e) The defendants are private citizens engaged in a private enterprise where their rights and privileges are to some extent different and otherwise from those of railroad corporations.

(f) Appellants, so far as they engage in interstate or foreign trade, deal solely in oil. The physical properties used in making the oil do not enter into such commerce. This case involves only the interstate and foreign trade, and hence is not concerned with the manufacture or the physical properties used therein.

FACTS.

The facts are exhaustively considered in other briefs, of the appellants, but a very brief sketch of them in the light of the foregoing will help, I think, to a clearer insight of the great injustice the Court below unwittingly did us by its decree.

The Sherman Act protects honest traders, however wealthy—however powerful. It denounces only those traders who use unlawful means.

The intent of the Sherman Act was not and is not to cripple trade or to restrain it or lessen it, but on the contrary to free it and enlarge it.

That Act is not concerned with and did not and does not seek to determine the method by which property will be held, but left that to the states in which the different properties were located.

The Act, being a criminal one, deals with maleficent conduct, such as one usually attributes to conspirators who seek to violate the law, whose conduct is wrongful and criminal, immoral and unlawful.

It is that class of men which the Act condemns.

It is not the class of men who produce and construct and build up and make successful the large business enterprises of the day that the Act condemns.

It is not the honest, industrious men who studied, worked with, conserved, improved, refined and introduced and sold to the world the extraordinary natural product which, in its crude state of little value, became through their work the cheapest illuminant of the world and a blessing to mankind.

These men who have built up and created the combination or the group of properties known as the "Standard Oil Properties" began their work in the earliest period of production, 1862 to 1880, when crude oil towns rose and fell as mining towns of the gold and silver regions do: when the excitement of sudden wealth by unexpected developments of crude oil drew thousands of men to whom, in that early period, the strict rules of law were but little known, and were as often disregarded by all as they were observed.

That was a period where each refiner or shipper of oil on the railroads made the best terms he could for the transportation of his oil, and no one of them then imagined that there was any other feasible way to transact such business. Like the transportation in barges down the Allegheny River, each barge owner got the highest price he could, and each shipper of oil the lowest price. It was a period when the excitement of the new discoveries of oil and the highly speculative period succeeding 1865 encouraged the building by many of new and inefficient and poorly built refineries, until the capacity of such refineries far outran the oil production, and the failure of many of them was inevitable.

When new and enlarged and more expensive refineries were imperatively demanded by the increasing trade and but few men were able to provide the funds adequate for such purpose, and still fewer of them were willing to embark in so hazardous an enterprise; when the place or places of production of crude oil were utterly unknown; when the continuity of the production of any known well, or indeed of any well at all, was wholly uncertain,—men gambled in such a business, took risks, made sudden fortunes and lost them as suddenly. Many incapable men entered into this business, and the law of evolution worked in it, and only the few and the fit survived. It was only the few sober, industrious, eager, far-sighted and long-headed men with their eyes to the future and the great possibilities of that future, who survived; men who were willing to forego the comparatively small profits of the present for the possible enormous profits of the future. These men risked their fortunes in and devoted their lives to this enterprise. They took all the elements of risk; they were entitled to a very large element of gain.

PRODUCTION OF CRUDE OIL IN THE UNITED STATES.

Year.	Barrels 42 Gallons.
1859	2,000
1860	500,000
1861	2,113,609
1862	3,056,690
1863	2,611,309
1864	2,116,109
1865	2,497,700
1866	3,597,700
1867	3,347,300
1868	3,646,117
1869	4,215,000
1870	5,260,745
1871	5,205,234
1872	6,293,194
1873	9,893,786
1874	10,926,945
1875	8,787,514
1876	9,132,669
1877	13,350,363
1878	15,396,868
1879	19,914,146
1880	26,286,123

From 1859 to 1876, the production of crude oil was confined to the states of Pennsylvania and New York. In the latter year the development shifted to the state of Ohio, which began with 31,763 barrels, and West Virginia, which produced 120,000 barrels. California also produced 12,000 barrels in that year.

In 1883, Kentucky and Tennessee first produced 4,755 barrels; in 1887 Colorado began with 76,295 barrels; in 1889 Indiana first produced 33,375, Illinois 1,460, Kansas 500 barrels. In 1896, Texas produced 1,450 barrels and the next year 65,975; and in 1902 Louisiana began with 548,617 barrels.

The price of crude oil prior to 1865 varied from ten cents a barrel to sixteen dollars a barrel—from 1865 to 1870 from $1.90 per barrel to $7.25 per barrel.

Barrels then cost from $1.60 to $2.10.

Transportation at first cost from $1.50 to $4.00 per barrel.

When over-production, feverish times, panicky conditions of 1873-1880, and the inevitable consequences of high speculation, became due, dozens of refineries were of necessity cast upon the market, and were practically sold for what they would scrap.

There were few men who would buy such refineries and still fewer who would buy any number of them, but these appellants, still looking to a large ultimate success, again took the risks; they purchased many of them; reconstructed and rebuilt some, and added the good suitable material of the old to the enlarged new plant. Many of the old plants were incapable of use in the refining of oil.

After 1882 they very largely constructed, built, improved and enlarged their own properties.

The value of all their refineries in 1882 was $17,000,000.00. Between 1882 and 1906 they spent in improving and enlarging these over $40,000,000.00.

Between 1882 and 1900, the appellants purchased but four refineries of any importance: the two Globe Refineries, the Atlas Refinery and the Borne, Scrymser & Co. refinery. In 1900 they also purchased a small refinery in California as part of the Pacific Coast Oil Company. From 1882 to 1906 these were the only refineries of any importance they purchased, but in that period they very greatly improved and enlarged the other refineries they owned, and also greatly improved and enlarged the refineries they had purchased between 1882 and 1906.

In 1906, the total output of refined oil of the Standard Refineries was 24,188,826 barrels of fifty gallons each.

In 1906 the Standard Oil Company had the following refineries in actual operation, the inventory value being set opposite each separate refinery. (See Defendants' Exhibit 269, Vol. 19, p. 627.)

Company.	Capacity bbls. 42 g. crude yearly.	Cost. Real Estate.	Improvements.
Atlantic Refining Co., Eclipse Works, Franklin, Pa.....	3,285,000	23,776.00	1,984,718.69
Pittsburg Refinery	461,725	179,174.70	203,507.17
Atlantic Philad. & Marcus Hook Refineries	11,915,425	975,981.43	9,468,108.91
Solar Refining Co.....	1,861,500	78,572.75	1,943,879.28
Standard Oil Co. (Cal.).....	6,807,980	580,429.42	3,387,242.32
Standard Oil Co. (Ind.) Whiting, Ind.	8,192,790	259,378.98	7,828,708.39
Sugar Creek, Mo.....	3,011,980	30,175.00	1,142,705.48
Standard Oil Co. (Kas.).....	1,645,500	12,525.50	477,933.77
Standard Oil Co. (N. J.) Bayonne Ref.	13,840,435	1,988,076.96	10,061,238.84
Baltimore Div.	2,206,790	186,013.44	1,076,568.08
Camden Works, Parkersburg	534,360	44,722.56	767,035.19
Eagle Works	3,273,320	296,685.16	2,306,515.97
Standard Oil Company of N. Y. Atlas Works, Buffalo.....	982,215	87,348.51	1,378,712.12
Long Island Refy.....	1,950,195	669,498.85	1,182,646.47
Pratt Works, Brooklyn.....	1,578,990	586,729.05	1,093,533.08
Pratt Works, L. I. City, tar..	530,710	161,773.99	1,824,310.25
Sone & Fleming Works.....	1,689,950	517,489.66	1,509,992.41
Standard Oil Co. (Ohio).....	2,122,840	501,600.54	1,439,006.80
Vacuum Oil Co., Rochester, N. Y.		31,725.00	514,912.40
Olean, N. Y.....	2,578,725	28,885.76	857,691.22
Total.....	68,470,430	$7,240,563.26	$50,448,996.84
			$57,689,560.10

The refineries owned in 1882 consumed 16,500,000 barrels of crude oil annually; the present refineries in 1906 had a capacity of 68,462,420 barrels annually (Defendant's Exhibit 269), and in that year actually consumed 64,958,301 barrels (Defendants' Exhibit 269). This consumption was increased to about 72,000,000 barrels in 1907 (Archbold, Vol. 17, p. 3252), and the capacity of the refineries has, of course, been necessarily increased to take care of this.

We are not able to exactly gather from the evidence the money the Standard expended from 1882 to 1906 in

building and improving its properties, but we believe that approximately the following are fairly accurate—

Refinery Construction:		
1882 to 1899,	about	$30,000,000
1900 to 1906,	"	20,000,000
Pipe Lines:		
1882 to 1899,	"	28,000,000
1900 to 1906,	"	70,000,000
Tank Cars:		
1882 to 1899,	"	3,000,000
1900 to 1906,	"	5,000,000
Marketing Stations:		
1882 to 1899,	"	10,000,000
1900 to 1906,	"	7,000,000
Ships:		
1882 to 1899,	"	11,000,000
1900 to 1906,	"	10,000,000

We arrive at these figures in this manner:

In 1882 the Standard Oil assets—refineries—were $17,000,000.00. (Vol. 17, page 3253.)

In 1906 the refineries were $57,680,560.10—of which $50,448,996.84 was for improvements. (Defendants' Exhibit 269, Vol. 19, page 627.)

In 1883 the assets were $72,869,596.46. (Petitioner's Exhibit 941.)

In 1906 the assets were $359,400,193.31. (Petitioner's Exhibit 10.)

In 1882 the mileage of pipe lines was 3,531 miles. (Defendants' Exhibit 261.)

In 1906 the mileage of pipe lines was 54,616 miles. (Defendants' Exhibit 261.)

In 1882 the marketing stations were 130. (Vol. 17, page 3242.)

In 1906 the marketing stations were 3,573. (Defendants' Exhibit 264.)

These figures accurately show $50,000,000.00 spent in improvements of refineries, and $40,000,000.00 of that spent between 1882 to 1906.

The total net assets in 1883 were $72,869,596.46, and in 1906, $359,400,193.31.

This gave an increase of about $280,000,000.00.

We estimate from increase in pipe lines, marketing stations, etc., the expenditures in constructing them.

As the early oil business grew, pipe lines called "gathering lines" to take the oil from the well and deliver it to the refinery became necessary, and these men acquired part, but in large manner actually built many of these lines. They

also laid out and built pipe lines connecting the West with the Atlantic Ocean in the East.

In 1882 the Standard interests owned, through purchase and through construction 2,468.60 miles of gathering lines and 1,062.95 miles of trunk lines (Defendants' Exhibit 261), of which latter all but about 48 miles (the Columbia Conduit Company, purchased in 1877) was entirely a Standard construction (Archbold, Vol. 17, p. 3630). From 1882 to the present time the Standard has bought (outside of the California field) only about 300 miles of pipe line (Archbold, Vol. 17, p. 3233). *The growth of the pipe lines since* 1882 *is due to actual construction work by the Standard itself; and in* 1908 *it owned outside of the California field,* 45,227.74 *miles of gathering lines and* 9,388.91 *miles of trunk lines, making a grand total of* 54,616.65 (*Defendants' Exhibit* 261, *Vol.* 19), *over* 50,000 *miles of which were absolutely the Standard's own construction.*

A graphic and striking illustration of the growth of the pipe line system from 1882 to 1908 is shown by defendants' Exhibit 262. The vastness of this branch of the Standard's business is shown by the fact that in 1889 the investment in pipe lines was $21,386,362.76, and in 1906 it had grown to $61,518,357.74.

In 1882, they had of these pipe lines 3,531.55 miles; in 1899 they had increased to 14,653.63 miles; in 1908 to 54,616.65 miles.

After 1882 the production of crude oil largely increased.

INCREASED PRODUCTION OF CRUDE OIL BETWEEN 1881 AND 1905.

1881	27,661,238
1882	30,349,897
1883	23,449,633
1884	24,218,439
1885	21,858,785
1886	28,064,841
1887	28,283,483
1888	27,612,025
1889	35,163,513
1890	45,823,572
1891	54,292,655
1892	50,514,657
1893	48,431,066
1894	49,344,516
1895	52,892,276
1896	60,960,361
1897	60,475,516
1898	55,364,233
1899	57,070,850
1900	63,620,529
1901	69,389,194
1902	88,766,916
1903	100,461,337
1904	117,080,960
1905	134,717,580

Reservoirs to hold the oil and prevent its destruction became necessary, and millions of dollars were invested by these men in their construction, thereby saving the oil for thousands of producers who otherwise would have lost the same. In 1906 they had about 80,000,000 barrels of crude oil stored.

In 1875, the total storage of crude oil did not exceed 3,000,000 or 4,000,000 barrels; in 1886 this had grown to 32,000,000 barrels at an investment for storage alone of about $32,000,000. In 1908 the Standard had stored about 85,000,000 barrels.

Tank cars had to be built to transport the refined oil from the refineries in the West to the Atlantic Ocean in the East, and from many refineries to many selling stations, and these men built, out of their own resources, 10,594 cars, which are now run over all the roads of the United States, taking the oil practically to the home of the consumer. In this they have invested of their own money, many millions of dollars.

Selling stations, where oil could be stored within easy reach of the consumer and delivered to the consumer speedily and without waste, were desirable, and these men have constructed in the United States 3,573 of them, almost wholly

with their own money, and they have other selling stations scattered all over the world.

Ships of peculiar construction were necessary to transport the refined oil to foreign ports, and these men, out of their own resources, built such ships and they now cross the Atlantic and carry millions of barrels of oil for public consumption in Europe and the East.

Investigation made it possible that the by-products of oil formerly thrown away be utilized and made valuable, and these men, by the employment of adequate talent and skill and the expenditure of large sums of money, have produced more than twenty by-products from this crude oil which they sell all over the world.

Following are the principal by-products now produced:

Naphtha,
Gas Oil,
Fuel Oil,
Paraffine Oils,
Pitch,
Road Oils,
Asphalt and Paving Residuums,

Spindle Oil,	Roofers' Wax,
Wool Stocks,	Soap Stocks,
Filtered Cylinder Oils,	Cordage Oils,
Unfiltered Cylinder Oils,	Acid Oils,
Waxes,	Turpentine Substitutes,
Candles,	Engine Distillates,
Greases,	Petrolatum,
Coke,	Vaseline.

Naphtha sales in the United States by the Standard Refineries grew from 2,274,199 barrels of 50 gallons each in 1895, to 4,958,027 barrels in 1906.

The paraffine wax home trade grew from 37,185 tons in 1892 to 120,496 tons in 1907. The exports of the same grew from 29,846 tons in 1890 to 86,752 tons in 1906.

All these things that these men have purchased or improved, have gone to the production and sale of but one article—crude oil and its products. They have increased the sale of refined oil until in 1906 it amounted to 24,188,826 barrels of fifty gallons each.

They have increased the exportation of refined oil until in 1906 it amounted to 17,565,682 barrels of fifty gallons each.

PETITIONER'S EXHIBIT NO. 377.

(Vol. 8, page 904.)

Year.	Total No. of Barrels Exported.	Exports S.O.Co.
1900	14,788,269	13,416,486
1901	16,549,590	14,976,822
1902	15,576,020	13,899,406
1903	13,836,744	11,933,037
1904	15,227,163	13,230,096
1905	17,629,008	15,495,080
1906	17,565,682	15,159,164

By the practice of rigid economies they have reduced the expenses of the producing, transporting and refining of oil. They have practiced upon the theory of large production and small profit, until refined oil is now sold to the retail dealer (less freight) at from six to ten cents per gallon. (See Defendants' Exhibit 293-B.)

In the doing of all these things, they have employed thousands of men, and yet not one of their employes came upon the stand to complain of any unfair or even ungenerous treatment from these men. No refiners whatever, except Emery, came upon the stand as a witness, and even he did

not prove that by any unlawful means the appellants had forced them to sell or retire from the business.

All these different things which these men bought and built—refineries, pipe lines, reservoirs, tank cars, steamships —naturally make one whole—can be operated successfully only as one whole—all parts are useful only each to the other, and to be so useful must have a connection with one or more of the others. Each was naturally a companion to the others.

Many parts of this unit become practically valueless if their connection with the others is severed. Of what value are the wells if the pipe line is not connected—the refineries if the crude oil is not brought to them by pipe lines—the tank cars for refined oil unless used in connection with the refineries—the selling stations unless supplied from refineries?

The unit is made up of many fractions, but each has its function, and if any one is taken out, the whole is disintegrated.

THE SUCCESS OF THE STANDARD OIL GROUP, GREAT AS IT IS, DID NOT CREATE A MONOPOLY OF THE BUSINESS.

TAKE REFINERIES—

DEFENDANTS' EXHIBIT 277.

COMPETITIVE REFINERIES.

District.	Name and Location.
New York Harbor	Columbia Oil Co., Constable Hoo.., N. J.
	Valvoline Oil Co., Edgewater, N. J.
Philadelphia	Manufacturers' Paraffine Co., Phila., Pa. (formerly Pr.. agon Oil Co.)
	Enterprise Oil Works, Phila., Pa.
	Sunlight Oil & Refining Co., Phila., Pa.
	Pure Oil Co., Marcus Hook, Pa.
	National Refining Co., Marcus Hook, Pa.
	Sun Company, Marcus Cook, Pa.
Pittsburg, Pa., and vicinity	Crew-Levick & Co., Marcus Hook, Pa.
	Beaver Refining Co., Washington, Pa.
	Canfield Oil Co., Coraopolis, Pa.
	Freedom Oil Works, Freedom, Pa.
	Island Petroleum Co., Neville Island, Pa.
	West Pittsburg Oil Refg. Co., Neville Island, Pa.
	Lake Carriers Oil Co., Coraopolis, Pa.
	Miller's, A. D., Sons Co., Allegheny, Pa.
	Pittsburg Oil Refining Co., Coraopolis, Pa.
	Waverly Oil Works, Pittsburg, Pa.
Other oil region points	American Oil Works, Titusville, Pa.
	Cold Water Oil Co., Raymilton, Pa.
	Conewango Refining Co., Warren, Pa.
	Continental Refining Co., Oil City, Pa.
	Cornplanter Refining Co., Warren, Pa.
	Crystal Oil Works, Oil City, Pa.
	Dougherty, W. H. & Sons, Petrolia, Pa.
	Emery Mfg. Co., Bradford, Pa.
	Emlenton Refining Co., Emlenton, Pa.
	Empire Oil Works, Oil City, Pa.
	Franklin &Raymilton Refining Co., Raymilton, Pa.
	Germania Refining Co., Oil City, Pa.
	Glade Oil Works, Warren, Pa.
	Independent Refining Co., Oil City, Pa.
	Levi Smith, Clarendon, Pa.
	Penn Lubricating Co., Bradford, Pa.
	Penna. Refining Co., Carns City, Pa.
	Penn Refining Co., Oil City, Pa.
	Penna. Paraffine Works, Titusville, Pa.
	Seneca Oil Works, Warren, Pa.
	Superior Oil Works, Warren, Pa.
	Tiona Refining Co., Clarendon, Pa.
	Titusville Oil Works, Titusville, Pa.
	United Refining Co., Struthers, Pa.
	Valvoline Oil Co., East Butler, Pa.
	Warren Refining Co., Warren, Pa.
	Wellsville Refining Co., Wellsville, N. Y.
Ohio	Wilburine Oil Works, Warren, Pa.
	National Refining Co., Marietta, O.
	Sterling Oil Works, Marietta, O.
	National Refining Co., Cleveland, O.
	Craig Oil Co., Toledo, O.
	Canfield Oil Co., Findlay, O. (purchased by National Refining Co.)
	National Refining Co., Findlay, O.
	Paragon Refining Co., Toledo, O.
	Wyandot Refineries Co., Crawford, O. formerly Wyandot Producing & Refg. Co.)
	Sun Oil Co., Toledo, O.

COMPETITIVE REFINERIES—Continued.

District.	Name and Location.
Kansas	Caney Refining Co., Caney, Kas.
	Chanute Austin Refining Co., Chanute, Kns.
	Eastern Kansas Oil Refinery, Moran Kas.
	Great Western Oil Refining Co., Erie, Kas.
	Kansas & Texas Oil, Gas & Pipe Line Co., Chanute, Kas.
	Kansas City Oil Co., Kansas City, Kas. (formerly Kansas City Oil & Gas Co.)
	Kansas Co-Operative Refining Co., Chanute, Kas.
	Kansas Crude Oil & Gas Co., Chanute, Kas.
	Kansas Oil Refining Co., Chanute, Kas.
	National Refining Co., Coffeyville, Kas.
	Paola Refining Co., Paola, Kas.
	Petrolia Refining Co., Petrolia, Kas.
	Rollin Refining Co., Rollin, Kas.
	Standard Asphalt & Rubber Co., Independence, Kas.
	Sunflower Oil Co., Niotaze, Kas.
	Superior Refining Co., Longton, Kas.
	Uncle Sam Oil Co., Atchison, Kas.
	Uncle Sam Oil Co., Cherryvale, Kas.
	Webster Refining Co., Humboldt, Kas.
Oklahoma	Chelsea Refining Co., Chelsea, Okla.
	Muskogee Refining Co., Muskogee, Okla.
	Oklahoma Refining Co., Oklahoma City, Okla.
	Tulsa Refining Co., Tulsa, Okla.
	Uncle Sam Oil Co., Tulsa, Okla.
	Webster Refining Co., Okmulgee, Okla.
Illinois	Leader Oil Co., Casey, Ill. (Cornplanter Refg. Co.)
	Mid-Continent Oil Refg. Co., E. St. Louis, Ill.
	Robinson Oil Refining Co., Robinson, Ill.
	Union Oil Co., East St. Louis, Ill.
Kentucky	Indian Oil Refining Co., Georgetown, Ky.
Colorado	Boulder Refinery, Boulder, Colo.
	Colorado Refining & Oil Co., Boulder, Colo.
Wyoming	Pittsburg-Salt Lake Oil Co., Spring Valley, Wym.
California	Capitol Refining Co., Stockyards, Cal.
Alameda County	Pacific States Refineries, Fruitvale.
	Paraffine Paint Co., Oakland.
Contra Costa County	Western Oil Refg. & Mfg. Co., Dodeo.
	Union Oil Co. of California, Oleum.
Fresno County	California Fresno Oil Co., Fresno.
Kern County	Buckeye Refg. Co., Kern River Field (formerly Clark Oil Refg. Co.)
	Sunset Oil & Rfg. Co., Sunset Field.
Los Angeles County	Asphaltum & Oil Refg. Co., Los Angeles.
	Atlas Refining Co., Los Angeles (formerly 2 refineries; New Franklin Oil Co. and Atlas Reduction Co.)
	British California Oil Co., Los Angeles.
	Densmore Stabler Rfg. Co., Los Angeles.
	Hercules Oil Co., Los Angeles.
	Jordan Refining Co., Los Angeles (formerly Meridian Oil Co.)
	Los Angeles Refg. Co., Los Angeles.
	Southern Refining Co., Los Angeles.
	Sunset Oil & Refg. Co., Obispo.
	Union Consolidated Oil Co., Los Angeles.
San Bernardino County	Puente Oil Co., Chino.
San Luis Obispo County	California Petroleum Refineries, Oilport.
Santa Barbara County	Associated Oil Co., Alcatraz (formerly Alcatraz Asphalt Co.)
Ventura County	Santa Paula Oil Co., Santa Paula.

COMPETITIVE REFINERIES—Continued.

District.	Name and Location.
Texas	Central Asphalt Works, Port Neches, Tex. (sometimes known as Evangeline Oil Co., taken over by Texas Co.)
	United Oil & Refining Co., Beaumont, Tex. (formerly National Refg. Co., U. S. Oil & Refg. Co., Union Oil & Refg. Co.)
	Higgins Oil & Fuel Co., Beaumont, Texas.
	Great Southern Oil Co., Beaumont, Tex. (W. H. Sturman, of N. Y., receiver).
	San Jacinto Oil Ref. & Tank Car Co., Corsicana, Tex. (leased by Richardson-Gay Oil Co.)
	Southwestern Oil Co., Houston, Tex.
	Gulf Refining Co., Plant No. 2, Port Arthur, Tex.
	Gulf Refining Co., Plant No. 3, Port Arthur, Tex.
	The Texas Co., Port Arthur, Tex.
	Howard Refining Co., Port Arthur, Tex. (formerly the Colonia Ref. Co.)
Louisiana	Jennings Refining Co., Jennings, La. (formerly Union Oil & Refining Co.)
	Record Oil Refining Co., Port Chalmette, La.
	National Oil Works & Mill Supply Co., New Orleans, La.

The Standard produced of crude oil in 1900 31.27 per cent., but in 1906 only 11.11 per cent.

In 1894 the Standard sold of the domestic trade 62.44 per cent. of refined oil, but in 1906 only 37 per cent.

The Standard exported in 1900 of refined oil 90.8 per cent., but in 1906 only 86.3 per cent.

The study of the oil industry from 1865 to date will demonstrate the following:

(a) The proper development of that business required very large combinations of capital and skill.

(b) That development, to be economically accomplished, required the association of the crude oil well—the gathering lines—the reservoirs—the refineries—the tank cars—the ocean steamship vessels—the long distance pipe lines—the selling stations—and other facilities.

(c) It required large capital to be successfully used in experiments whereby refractory crude oil, such as the Lima oil, was made fit for use; whereby by-products for years thrown away were made useful commodities for human consumption.

(d) The shifting nature of the oil production from Pennsylvania to California, to Texas, to Oklahoma and other fields, and the necessity of the caring for the *oil* just as produced, were additional reasons for large capital.

(e) No ordinary organization could have done this.

(f) Then consider the foreign business, the ocean steamers to carry the oil, the selling stations all over Europe and Asia.

This group of men, the individual appellants, have done all this.

They have created property—have created wealth—have added to the wealth of our country and its taxable property.

They have done it with their own means and skill and industry.

They worked at it from 1865 to 1910. They risked their fortunes in its development.

And yet in 1910 a Court sitting in equity struck their organization down:

Not because they were doing unlawful things—

But simply because they made a mistake as to the method in which they could the better hold their combined properties.

D. T. Watson,
For Appellants.

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